

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
OCTOBER 14, 2005**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on October 14, 2005, beginning at 10:00 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox and Commissioner Mike Joyner were present at the meeting.

**MINUTES OF SEPTEMBER 8, 2005, MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the September 8, 2005, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the September 8, 2005, meeting. Seconded by Commissioner Joyner. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he found no conflicts of interest. Chairman Fox stated that he found no conflicts.

**I. HEARING CASES - 61 Listed**

Chief Deputy Counsel Fred A. Gregory stated that Mr. William H. Potter, Jr., attorney for contested case #1, Desperado's, was present to speak on behalf of his client. Assistant Counsel Renee Cowick represented the Commission.

This case was heard by Administrative Law Judge, Beryl E. Wade on March 22, 2005, in New Bern, North Carolina. The issue before the court was, whether the permittee's employee failed to superintend the business on May 29, 2004, at 11:45 p.m., in violation of 18B-1005(b).

Judge Wade found that prior to May 29, 2004, Agent Russell King of North Carolina Alcohol Law Enforcement (NCALE) discussed with the permittee the ongoing problem of patrons using illegal drugs in the bathroom. The permittee agreed to post an employee outside the bathroom to discourage any further illegal drug activity. On some occasions prior to May 29, 2004, NCALE agents visited the business and found an employee stationed outside the bathroom. However, on May 29, 2004, during a routine inspection of the premises, Agent R. King's enforcement action, lasting approximately 10 minutes, no employee of the permittee was present in or around the bathroom. Based upon these facts Judge Wade found the permittee to be in violation of 18B-1005(b), to which the permittee through counsel accepted.

Permittee argued that certain facts found by Judge Wade were erroneous and did not support the recommended decision. In addition, permittee cited certain procedural errors and asked the Commission to issue written warning rather than impose the penalty recommendation by Judge Wade.

Chairman Fox took notice that in the year before the May 29, 2004 violation, the permittee's premises was checked on more than 20 occasions by NCALE and that on each of these occasions an employee of the permittee was on duty outside of the bathroom and no drugs were found.

Chairman Fox stated that he felt inclined to accept Judge Wade's Order, but in consideration of the fact that the permittee did not have any violations during the two years preceding May 29, 2004, he would move to issue a written warning. The warning was issued contingent upon the permittee's stipulation that she would adhere to any and all recommendation that NCALE makes as to what she had to do in order to maintain her business. Commissioner Joyner seconded Chairman Fox's motion. So Ordered.

Mr. Gregory stated that Mr. Ashok Patel was present to speak on behalf of his business, hearing case #32, Kims Mart. Mr. Patel stated that he had checked the ID before selling the alcohol on a couple of people. On one of the individuals, he had looked at the calendar wrong and the other person had a fake ID. He further stated that this is the first violation that he had received since having the business.

Chairman Fox asked Mr. Patel to tell the Commission where the business is located and how big it is. Mr. Patel stated that the business is located in Burlington, NC, in a residential area. Mr. Patel also stated that Elon College is located near by.

Ms. LoRita K. Pinnix, Assistant Counsel stated that this was not a sting case; it was a surveillance case. The officer happened to catch these kids buying alcohol.

Chairman Fox stated that he was willing to reduce the suspension to twenty days and the monetary penalty to \$4,000.00 upon the stipulation that he and his staff attend an education class within the next 45 days. Mr. Patel asked if he would have to pay the penalty and take the suspension. Chairman Fox stated that he would. Mr. Patel then asked if he could just have the suspension without the monetary penalty. Chairman Fox stated that the suspension would then be 75 days. Mr. Patel asked if the suspension could start right away since he would be out of town. Ms. Pinnix stated that he could start his suspension October 15, 2005, and she would contact Alcohol Law Enforcement to inform them. Chairman Fox made a motion to change the suspension to 75 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated Mr. Keith King was present to speak on behalf of his business, hearing case #33, Kings Wings and Things. Mr. King stated that when he first received his permit, he asked someone in the permit division if it was ok to keep the wine that was left there by the previous owner. The wine was on the wall in a wine rack, which was locked and it was for decoration purposes only. He stated that he was told that he could display the wine could not sell it. Mr. King said that he was only going to leave it up the on the wall as decoration. Mr. King said the agent confiscated the wine. Mr. King further stated that he told the agent that there were some open wine bottles in the back on the shelf.

Commissioner Joyner asked Mr. King how long had the business been open when the violation occurred. Mr. King stated that they had been open less than a month. Commissioner Joyner asked Mr. King if he understood what rules he violated. Mr. King replied that he didn't think that he was violating any rules regarding the wine because he didn't sell the wine and had asked if he could keep the wine in the restaurant. Ms. Pinnix stated that she had spoken with the agent who wrote the violation report and he told her that if the bottles had been unopened in the wine case he wouldn't have written a violation report. Mr. King stated that he had told the agent that there was some wine in the back of the restaurant that was opened, so he personally showed him.

Chairman Fox asked Mr. King about his restaurant. Mr. King stated that he sells wings, burgers and sandwiches. Chairman Fox asked when did he open the business. Mr. King replied that they opened November 2004. Chairman Fox asked if he sells beer now and Mr. King stated that they do. Chairman Fox asked if he was selling beer when he purchased beer from Sam's Wholesale. Mr. King said that he was and he only purchased beer from them because he thought they were a licensed wholesaler. He had read all the information regarding the purchase of alcohol only from a licensed wholesaler and he thought that like he had to get a permit to sell alcohol, he thought Sam's was a licensed wholesaler because they sold alcohol. Mr. King further stated that he pointed out to the receipt from Sam's to the agent, he wasn't trying to hide anything, he was trying to be honest.

Commissioner Fox made a motion to issue a written warning upon the stipulation that he and his staff attend an education class within the next 45 days. Mr. King stated that he already has a RASP class set up for October 24, 2005. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Bhupen Engineer was present to speak on behalf of his business, case #61, Bombay Cuisine. Mr. Engineer stated that he had been in business for five years. The server who had only been on the job about a week, sold the alcohol to the minor. He got scared, left the restaurant, went home and called Mr. Engineer. Mr. Engineer further stated that he told him to go back to the restaurant and take the citation.

Chairman Fox stated that he was willing to reduce the monetary penalty to \$500.00 upon the stipulation that he and his staff attend an education class within the next 45 days. Mr. Engineer asked the Commission if there was another alternative because it would take him four or five months to make \$500.00 profit in alcohol. Chairman Fox stated that they would leave the offer in compromise as signed. Mr. Engineer asked when the suspension would start. Chairman Fox replied that it would start November 10, 2005. Mr. Engineer stated that he would take the \$500.00 penalty. Chairman Fox stated that he would have to pay \$500.00 and he and his staff attend an education class within then next 45-60 days. Mr. Engineer stated that he would take the original offer in compromise of 15-day suspension or \$1,500.00. Chairman Fox made a motion to ratified offer as signed.

Ms Pinnix later came back to the Commission and stated that Mr. Engineer changed his mind and would like to take the \$500.00 penalty and attend an education class. Chairman Fox made a motion amend the previous motion and to reduce the penalty to \$500.00 upon the stipulation that Mr. Engineer and his staff attend an education class within the next 45-60 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Osama Abu-Zayed was present to speak on behalf of his business, hearing case #50, Rams Food Mart. Mr. Abu-Zayed stated he received a phone call at home from one of his employees stating that there was a problem at the business. Mr. Abu-Zayed stated that he lives close by and went to the business. The employee received a ticket for selling to a minor. He stated that the agent told him that the employee was getting the ticket not him. The employee went to court and has to serve some community service. Mr. Abu-Zayed stated that a little later he received notification from the Commission regarding the violation. He stated he was told that violation would be against the employee and not him.

Mr. Abu-Zayed stated that he and his employees check IDs. Chairman Fox stated they had surveillance video showing that he didn't check the ID. Commissioner Joyner told Mr. Abu-Zayed that they have to check the IDs. Mr. Abu-Zayed stated that the employee didn't check the ID before because he knew the buyer. Commissioner Joyner told him that he needs to always check the ID whether he has checked the ID before or not; if not, he will get in a lot of trouble.

Chairman Fox asked Mr. Abu-Zayed how many employees do he have. Mr. Abu-Zayed stated that he has two employees. He fired the employee that committed the violation and has hired a replacement.

Chairman Fox made a motion to reduce the penalty to \$500.00 upon the stipulation that he and his employees attend an education class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Ms. Pinnix represented the Commission regarding contested case #2, Rudean's Diner and Lounge 3. Ms. Pinnix stated that Administrative Law Judge James L. Conner, II, heard the case on October 7, 2003. The judge ruled that the Commission did not prove the case and recommended that the case be dismissed. The Commission filed no exceptions. Ms. Pinnix recommended that the Commission adopt the judge's decision of dismissal.

Chairman Fox made a motion to adopt the Judge Conner's decision of dismissal. Seconded by Commissioner Joyner.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing cases #1, Desperado's, case #32, Kims Mart, case #33, Kings Wings and Things, case #50, Rams Food Mart and case #61, Bombay Cuisine, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

## **II. FIRST OFFENSE CASES – 18 Listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on October 14, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Kimono Japanese Restaurant – 2519 Lewisville Clemmons Rd., Clemmons, NC 27012
2. Holiday Superette – 1742 Blowing Rock Blvd. NE, Lenoir, NC 28645
3. Steel Horses Custom Built Pizza Bar and Grill – 1423-23 Norwood Street SW, Lenoir, NC 28645
4. San Miguel Market – 216 Pollock Street, Selma, NC 27576
5. Lyons Service – 1221 Hwy 15, Creedmoor, NC 27522
6. Food Lion 1669 – 1601 Cross Link Road, Raleigh, NC 27610
7. Food Lion 1374 – 9525 Strickland Road, Raleigh, NC 27615
8. El Mirasol – 2038 North Church Street, Burlington, NC 27217
9. Piccolos Pizza and Pasta – 915 West Avenue, Lenoir, NC 28645
10. On the Run 22-18976 – 1914 Sedwick Road, Building 600, Durham, NC 27713
11. Kroger R-331 – 202 NC Hwy 54, South Pointe Crossing S/C, Durham, NC 27713
12. Jimmys Pizza House Restaurant – 203 North Main Street, High Point, NC 27260
13. Claddagh Bar and Restaurant - 130 East Parris Avenue, High Point, NC 27262
14. Courtyard by Marriott – 1000 Mall Loop Road, High Point, NC 27262
15. Etna 3174 – 1234 East Main Street, Havelock, NC 28532
16. Shamrock Grocery – 1233 East 34<sup>th</sup> Street, Charlotte, NC 28205
17. Queenstown Bistro – 1009 Chancellor Park Drive, Charlotte, NC 28213
18. Moes Southwest Grill – 168 Shentone Boulevard, Garner, NC 27529

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

## **III. ABC STORE LOCATION – ORANGE COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store within the city limits of Chapel Hill, North Carolina. On August 30, 2005, Daniel W. Sykes, General Manager of the Orange County ABC Board, submitted a letter to the Commission requesting approval of a proposed site. On September 8, 2005, Alcohol Law Enforcement Agent C. Simpson conducted an investigation and found that the Orange County ABC Board plans to open an ABC Store in Meadowmont Village. No conflict of interest exists between the owners of the property and Orange County ABC Board.

The nearest church is Triangle Church and is approximately 1½ miles from the proposed location. The nearest school is Mel & Zora Elementary School located at ½ mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on September 2, 2005, in compliance with the ABC Commission's 30-day requirement. Two complaints have been received by Daniel Sykes. One compliant was from a citizen who had concerns that the ABC Store would be near a bus stop, the other compliant was a concern that the store would attract transients to the area. The ABC Commission has received no objections.

Mr. Herring recommended that the ABC Commission approve the proposed store location. Chairman Fox made a motion to approve the location. Seconded by Commissioner Joyner. So Ordered.

#### **IV. ABC STORE LOCATION – WAKE COUNTY ABC BOARD, RALEIGH**

Administrator Michael Herring addressed the Commission concerning the proposed ABC Store relocation. On August 6, 2005, Craig Pleasants, General Manager of the Wake County ABC Board, submitted a letter to the Commission requesting approval for relocation of an ABC Store. On September 6, 2005, Alcohol Law Enforcement Assistant Supervisor Tony Mills conducted an investigation and found that the Wake County ABC Board plans to close the ABC Store located at Spring Forest Road and relocate near the Old Wake Forest Road Extension and New Center Drive in Wake County. The purchase price property is \$600,000.00. No conflict of interest exists between the owners of the property and Wake County ABC Board.

The nearest church is The Agape Word Fellowship and is approximately 1.1 miles from the proposed location. The nearest school is East Millbrook Middle School located at 1.2 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on August 17, 2005, in compliance with the ABC Commission's 30-day requirement and to date no objections had been received by the ABC Commission.

Mr. Herring recommended that the ABC Commission approve the proposed store location. Chairman Fox made a motion to approve the location. Seconded by Commissioner Joyner. So Ordered.

#### **V. ABC STORE LOCATION – WAKE COUNTY ABC BOARD, APEX**

Administrator Michael Herring addressed the Commission concerning the proposed ABC Store location in Apex, North Carolina. On August 24, 2005, the Commission received an email from Craig Pleasants, General Manager of the Wake County ABC Board, requesting approval for a proposed site. On September 14, 2005, Alcohol Law Enforcement Agent Josh Batten, conducted an investigation and found that the Wake County ABC Board plans to open an ABC Store in Peak Plaza located near Hwy 55 in Apex, North Carolina. The purchase price is \$375,000.00 and pending Commission approval, the proposed closing date would be no later than November 21, 2005.

No conflict of interest exists between the owners of the property and Wake County ABC Board. One of the Wake County Board members is a partner with the real estate brokers that worked on this project, but did not become involved in this transaction.

The nearest church is Scotts Grove Holy Church and is approximately eight tenths of a mile from the proposed location. The nearest school is Turner Creed Road Elementary School located approximately nine tenths of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on August 24, 2005, in compliance with the ABC Commission's 30-day requirement and to date no objections had been received by the ABC Commission.

Mr. Herring recommended that the ABC Commission approve the proposed store location. Chairman Fox made a motion to approve the location. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox approved the January 13, 2006, Commission Meeting date.

With no further business, the meeting adjourned.

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Douglas A. Fox  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Tiffany Goodson, Legal Division